



CANADIAN ENVIRONMENTAL LAW ASSOCIATION

L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

517 College St. Ste. 410 Toronto Ont. M6G 4A2 • ph: 416/960-2284 • fx: 416/960-9392
e-mail: cela@web.net • web site: www.cela.ca

June 9, 2000

Hon. J. Flaherty
Attorney General for Ontario
11th Floor
720 Bay Street
M6G 2Y4

BY COURIER AND FAX

Dear Minister Flaherty:

**Re: Terms of Reference -- Public Inquiry into Walkerton *E. Coli* Disaster
On Behalf of : Concerned Walkerton Citizens
And On Behalf of : Canadian Environmental Law Association**

Concerned Walkerton Citizens, is a newly formed group of citizens in Walkerton, specifically concerned with the Public Inquiry intended to probe the Walkerton *E. Coli* outbreak. Concerned Walkerton Citizens (CWC) will be seeking intervenor status at the Inquiry once it is convened.

One of the major concerns of CWC is to be able to provide direct input into the terms of reference for the inquiry. CWC believes that their full participation is vital to restore the confidence of all citizens of Ontario in the government's ability to ensure the safety of Ontario's drinking water supply.

Accordingly, CWC has asked us to assist them with preparation of a submission as to the factors and questions that should be addressed in the public inquiry. Accordingly, we set out proposed Terms of Reference and issues together with CWC that should be explored in the public inquiry so as to ensure that sufficient information is obtained to allow the Public Inquiry Judge to make findings as to the factors leading to the disaster and so as to make meaningful recommendations to ensure no repeat of the disaster in Walkerton or anywhere else in Ontario.

These submissions are also provided on behalf of Canadian Environmental Law Association, a legal aid clinic in the province of Ontario. Established in 1970, it advocates the use of existing laws to protect the environment, advocate environmental law reforms, promotes citizen participation in environmental decision-making and provides legal services in the field of environmental law to individuals, organizations and citizens' groups which would otherwise be unable to afford or have access to counsel.

There are two categories of proposed terms of reference – a set of broad, general terms of reference to ensure that the issues are fully canvassed. Following that is a set of much more specific issues which must also be addressed to ensure that a complete set of findings and recommendations that truly address all of the root causes of the disaster are provided.

Despite these submissions, we would request that you provide Terms of Reference in draft form for public comment so that we may assist CWC with a more thorough submission and an opportunity for review and comment in the community. These submissions are being prepared quite quickly because of media statements that the terms of reference are expected to be released by tomorrow. We hope that this information is incorrect, and that the tragedy of this disaster is not compounded by hasty preparation of terms of reference that might not be as complete and thoughtful as the citizens of Walkerton and Ontario would demand.

It is proposed that the Terms of Reference should include at least the following questions and issues.

PROPOSED TERMS OF REFERENCE

- **What factors led to the public health *E. Coli* disaster suffered by the community of Walkerton?**
- **What was the source of the e-coli outbreak?**
- **What was the source of the e-coli outbreak?**
- **Were responsibilities and duties clear and if not, what role did they play in the disaster?**
- **What were the Legislative or approval gaps that can be identified from this disaster?**
- **Were testing requirements adequate?**
- **Was staffing an issue?**
- **Are Our Water Standards Adequate?**
- **What role did provincial cut-backs and changing roles play in the disaster?**
- **Where Contingency and Emergency Preparedness plans sufficient?**
- **What role did legislative or regulatory changes play in the disaster?**
- **Was enforcement of laws adequate?**
- **What improvements to laws, regulations, policies and programs are required to ensure that there is no repeat of the disaster in Walkerton or elsewhere in Ontario?**

There are also a number of proposed noted below with respect to the process in conducting the public inquiry. It is our submission that the inquiry should be under the *Public Inquiries Act*.

DETAILED PROPOSED TERMS OF REFERENCE

1. **What factors led to the public health *E. Coli* disaster suffered by the community of Walkerton?**
 - What was the chronology of events that resulted in the water contamination?
2. **What was the source of the e-coli outbreak?**
 - Where did the *E. Coli* come from? How did it get into the water works system? Was there a prior history of *E. Coli* in the water works?
 - Were there multiple pathways for the *E. Coli* transmission into and through the water works system?
 - Was water works wells and distribution system design a contributing factor in the *E. Coli* exposure?
 - Was equipment breakdown a contributing factor?
 - Did changes to industrial farming rules and practices lead to exposure of the water system to *E. Coli*?
3. **Accountability and Jurisdiction - Were responsibilities and duties clear and if not, what role did they play in the disaster?**
 - Who had jurisdiction over the delivery of water services in Walkerton and who had oversight responsibility?
 - Were public utility boards members and staff adequately governed? Did they have an oversight role as to drinking water quality and if so, how did that oversight fail to prevent this disaster?

- Did the board staff have a protocol for steps to be taken when positive results were received for pathogens?
- What was the relationship between municipalities and utilities with respect to drinking water standards? Were the lines of accountability, responsibility and duties adequately specified?
- Was there an adequate safety culture in drinking water works in Walkerton, Ontario?
- What was the role and responsibility of medical officers of health? Was that role understood by the public utility? What communications between the two organizations about their respective roles and responsibilities have occurred?
- Have the staff of the utility and municipality been able to cope with rapid changes in the drinking water system? What changes have affected Walkerton?
- Were costs, local budgets and financing of upkeep repairs a contributing factor?

4. Reporting and Communications Issues - What were the Legislative or approval gaps that can be identified from this disaster?

- To whom, and in what time frame were adverse water quality results to be provided?
- What were the public notification requirements for adverse water quality results – by what mode of notification and in what time frame? More particularly, what were the communications from the Medical Officer of Health, municipality and Ministry of the Environment directly to the community?
- What were the communication methods for advising the community of the boiled water advisory and were they adequate? Could better methods avoid this kind of disaster?
- Why was there a delay of 48 hours following the boil water advisory and before the people of Walkerton were advised not to wash their hands in the water?
- Was the seriousness of the medical health hazard conveyed to the community adequately or at all?
- Was there any over-riding general requirements in law that information about grave or imminent risks to health must be communicated to the public and to designated authorities, and if not, was that a contributing factor to the disaster?
- What was the role of the understanding of the private lab as to their obligations? From where did the private lab reach their understanding as to their obligations in the event of an adverse water quality result?
- What communications took place between the Ministry of the Environment and the labs serving Walkerton, and when? What notification as to changes in labs was given to the Ministry of the Environment?
- What communications were sent on what dates and who read them? What procedures were there to ensure that critical information was received and acted upon? (Both within the utility and *vis-a-vis* all other outside agencies that had a role to play.)
- What communications were there between the Medical Officer of Health and the utility or municipality, on what dates, and what was the content of those communications? What role did these communications play in the disaster? What was the basis for the communications given?

- Did the MOE staff know how to follow their role communicating to the health unit and community?

5. Testing - Were Testing Requirements Adequate?

- Were the testing frequencies for drinking water quality adequate, especially in smaller communities?
- Were the testing parameters adequate?
- What procedures were in place in case of adverse water quality results? Were they followed?
- Are there special requirements to test water after major storm events or in other like circumstances?

6. Staffing and Training - Was staffing an issue?

- Was the accreditation and training of individuals who operate water works and public utilities adequate?
- Were public utility boards and staff adequately governed?
- Was the Ministry of the Environment adequately staffed?
- Was staffing at MOEE, MOH and at the water facility staffed differently during weekdays than on holidays and on the weekend?

7. Water Standards - Are Our Water Standards Adequate?

- How often are drinking water standards updated?
- Are the same drinking water standards (health parameters, monitoring, reporting, public notification and mitigation) applicable across the province and do they guarantee a minimum level of safety to all Ontario communities?

8. What role did provincial cut-backs and changing roles play in the disaster?

- Was the prior history of the water utility a contributing factor to the disaster, such as in financing, management, staffing or any other respects?
- Was there an impact on the management, financing and staffing of the drinking water works as a result of municipal amalgamation? Were there any changes in staffing, roles, responsibilities, lines of communications or reporting as a result of municipal amalgamation?
- What has been the provincial budget reductions generally and more specifically for capital water projects?
- What has been the impact of budget cuts on water testing, water monitoring, standard-setting and enforcement?

9. Contingency and Emergency Preparedness

- What back up equipment and contingency plans were in place for the drinking water system? Were those plans tested? If so, were they followed in this instance?
- Was there an emergency response procedure in place for the community? Was it initiated at any point during the development of this disaster? Was it followed properly?

- What was the emergency response procedure and capability on the eve of and during a long weekend? Were staff attending the water works? Were supervisory staff contacted or available during the weekend? What were the emergency communications protocols with Ministry of Environment and Medical Officer of Health? Were they followed?
- Should there be a provincial standard for the responses to this type of emergency?

10. What role did legislative or regulatory changes play in the disaster?

- What were the legislative and regulatory changes that have occurred with respect to water?
- Which of these changes are relevant to the Walkerton situation or other water delivery systems?

11. Enforcement

- Has enforcement generally increased or decreased in recent years?
- What role did the lack of enforcement have to play with respect to the Walkerton situation?

12. What improvements to laws, regulations, policies and programs are required to ensure that there is no repeat of the disaster in Walkerton or elsewhere in Ontario?

- What is the public's right to immediate notification of adverse water quality results and would that prevent disasters on the scale of the Walkerton disaster from happening again?
- What legislative, regulatory and policy gaps does the Walkerton situation identify and how should they be fulfilled?

In addition to the above comments, we would also like to make the following submissions with respect to the process of the public inquiry.

1. The inquiry should proceed under the *Public Inquiries Act*. However, in light of the nature of this disaster, provision should be made to make a more liberal standing rules so as to allow a broader range of interests to participate in the hearing.
2. The hearing should be held in the Walkerton area in an accessible facility. Residents should be reimbursed for their expenses in attending and participating in the hearing.
3. Intervenor funding should be provided for expert witnesses and other expenses.

As previously noted, we would ask that the proposed terms of reference be released in draft for public comment. Furthermore, CWC would appreciate an opportunity to meet with you to discuss the foregoing, preferably prior to release of draft terms of reference, but certainly prior to finalization of draft terms of reference.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Per
Theresa A. McClenaghan
Counsel

Paul Muldoon
Executive Director and Counsel